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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FOURTH AGE LIMITED, et al.,

Plaintiffs,

v.

WARNER BROS. DIGITAL
DISTRIBUTION, INC., et al.,

Defendants.

WARNER BROS. DIGITAL
DISTRIBUTION, INC., et al.,

Counterclaim Plaintiffs,

v.

FOURTH AGE LIMITED, et al.,

Counterclaim Defendants.

Case No. CV 12-09912 ABC (SHx)

Hon. Audrey B. Collins
Hon. Mag. Stephen J. Hillman

DISCOVERY MATTER

**DECLARATION OF RACHEL
VALADEZ IN SUPPORT OF THE
TOLKIEN/HC PARTIES'
MOTION FOR PROTECTIVE
ORDER RE NOTICE OF
DEPOSITION OF CHRIS SMITH**

[Fed. R. Civ. P. 37(a) and Central
Dist. Local Rule 37-2]

[Notice of Motion; Motion; and
[Proposed] Order filed and/or lodged
concurrently herewith]

Hearing Date: August 25, 2014
Time: 2:00 p.m.

Place: Ctrm. 550, Roybal Building

Action Filed: November 19, 2012
Discovery Cutoff: July 29, 2014
Trial Date, Pretrial Conf. and Motion
Cutoff Date: Vacated

DECLARATION OF RACHEL VALADEZ

I, Rachel Valadez, declare:

1. I am an attorney duly licensed to practice in all of the courts of the State of California and I am associated with the firm of Greenberg Glusker Fields Claman & Machtinger LLP, attorneys of record for Fourth Age Limited, Priscilla Mary Anne Reuel Tolkien, as Trustee of the Tolkien Trust, the J.R.R. Tolkien Estate Limited, Harper Collins Publishers, Ltd., Unwin Hyman, Ltd. and George Allen & Unwin (Publishers), Ltd. (the “Tolkien/HC Parties”) herein. I submit this declaration in support of the Tolkien/HC Parties’ Motion for Protective Order Regarding the Deposition of Chris Smith (the “Motion”). The facts set forth herein are of my own personal knowledge and if sworn I could and would testify competently thereto under oath.

2. Discovery in this case has been extensive and ongoing for over sixteen months. The parties have exchanged hundreds of thousands of pages of documents and multiple rounds of written discovery consisting of hundreds of requests for admission, interrogatories and requests for production. Defendants and counterclaim plaintiffs Warner Bros. Home Entertainment Inc., Warner Bros. Entertainment Inc., Warner Bros. Consumer Products Inc. and New Line Productions, Inc. (collectively, “Warner”) and The Saul Zaentz Company (“Zaentz”) (collectively, “Defendants”) have additionally taken thirteen percipient witness depositions; seeking leave of the Court to exceed the statutory cap of ten depositions, and to obtain multiple days of testimony beyond the seven hour limit as to various of the Tolkien/HC Parties’ witnesses. The discovery cutoff has twice been extended – at Defendants’ request – to allow the parties to complete discovery. The current discovery cutoff is July 29, 2014.

3. On February 11, 2014 Warner served its portion of a Joint Stipulation regarding a motion to compel an additional five percipient witness depositions beyond the ten provided for under the Federal Rules of Civil Procedure. In that

1 Joint Stipulation, Warner identified Chris Smith as a potential witness it would like
2 to depose.

3 4. During the parties' extensive meet and confer correspondence over the
4 past several months regarding deposition scheduling, Defendants never once
5 mentioned their intention to take Mr. Smith's deposition, nor did they ask the
6 Tolkien/HC Parties' counsel for available dates for Mr. Smith.

7 5. On July 21, 2014, just eight days prior to the discovery cutoff, Warner
8 served notice that it intended to take three additional percipient witness depositions,
9 including the production of documents at two of those depositions, all set to occur
10 at 9:00 a.m. on the morning of the July 29 discovery cutoff. Attached hereto as
11 Exhibit "A" is a true and correct copy of Warner's Notice of Deposition of Chris
12 Smith (the "Notice"). Attached hereto as Exhibit "B" is a true and correct copy of
13 Warner's notice of an additional day of deposition of the Tolkien Parties' 30(b)(6)
14 witness, including the production of documents. Attached hereto as Exhibit "C" is
15 a true and correct copy of Warner's Notice of subpoena to third-party Andrew
16 Boose, the Tolkien Parties' former counsel, seeking testimony and the production
17 of documents.

18 6. Warner Exhibits A, B and C on the Tolkien/HC Parties after the
19 Tolkien/HC Parties had previously noticed the deposition of Warner employee,
20 Jeremy Williams, to occur at that same date and time.

21 7. On the morning of July 25, 2014, I wrote to Warner, enclosing written
22 objections to the Notice, explaining that the Notice was improper for several
23 reasons, including that it was not reasonable to notice the deposition of a witness
24 who resides in the United Kingdom in Los Angeles on only eight days' notice. I
25 further informed Warner that if it did not withdraw its notice by close of business,
26 the Tolkien/HC Parties "would have no choice but to immediately seek a protective
27 order." Attached hereto as Exhibit "D" is a true and correct copy of my July 25,
28 2014 letter, enclosing the Tolkien/HC Parties' written objections to the Notice.

8. On July 28, 2014, Warner's counsel, Molly Lens, wrote to me, acknowledging receipt of the Tolkien/HC Parties' objections to the Notice. Warner, however, did not withdraw the Notice and instead tried to condition the previously noticed deposition of Warner employee Jeremy Williams on the Tolkien/HC Parties' producing Mr. Smith for deposition, as well as producing the Tolkien Parties' 30(b)(6) witness for an additional day of testimony, and third-party witness Andrew Boose. Attached hereto as Exhibit "E" is a true and correct copy of Ms. Lens' July 28 email to me.

9. The Tolkien/HC Parties have no control over Andrew Boose.

10. Chris Smith resides in the United Kingdom.

11. Attached hereto as Exhibit "F" is a true and correct copy of the Court's April 8, 2013 order establishing the initial case schedule in this matter.

12. Attached hereto as Exhibit "G" is a true and correct copy of the Court's August 28, 2013 order vacating the trial date in this matter and extending the discovery cutoff to April 15, 2014.

13. Attached hereto as Exhibit "H" is a true and correct copy of the Court's April 14, 2014 order which, among other things, further extends the discovery cutoff to July 29, 2014.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 28th day of July, 2014 at Los Angeles, California.

/s/ Rachel Valadez

Rachel Valadez